Supreme Court, U.S.
FILED

06-496 AUG 2 - 2006

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(2)

No.

SUPREME COURT OF THE UNITED STATES

GERALDINE MILLS, M. D.
Appellant,

v.

STEVE BROWN and JOYCE BROWN
Appellees.

GERALDINE MILLS, M.D.
Appellant,

v.

DEBORAH CINQUEGRANA and BRIAN CINQUEGRANA
Appellees.

On Petition For Writ of Certiorari
To The United States Court of Appeals
for The First Circuit

SUPPLEMENTAL APPENDIX

October 5, 2006

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APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Geraldine Mills, M.D.,
Plaintiff
v. C.A. 03-422L
Steve Brown and
Joyce Brown,
Defendants

Geraldine Mills, M.D.,
Plaintiff
v. C.A. 03-457L
Deborah Cinquegrana and
Brian Cinquegrana,
Defendants.

MEMORANDUM AND ORDER

Before the court in each of the above entitled actions are two motions filed by Geraldine Mills, M.D. ("Plaintiff"): (1) Plaintiff's Motion to Amend Complaint Pursuant to Federal Rules of Civil Procedure 15 a-c ("Motion to Amend") and (2) Motion to Submit Portions of Medical Records as Evidence in Support of Plaintiff ("Motion to Submit Records")(collectively the "Motions"). Although the cases have not been consolidated, they are factually related and involve the same Plaintiff and similarly situated Defendants, and the Motions present the same issues. Therefore, the court addresses the four Motions in a single Memorandum and Order. Where necessary, the court differentiates between the two cases by referring to Geraldine

Mills, M.D. v. Steve Brown and Joyce Brown, CA 03-422L as "Brown" and to Geraldine Mills, M.D. v Deborah Cinquegrana and Brian Cinquegrana CA 03-457L as " Cinquegrana." For the reasons stated herein, the Motions are denied.

I. Travel

A. Brown

Plaintiff filed her complaint on September 18, 2003. See Complaint (Document #1). Defendants Steve Brown and Joyce Brown (the "Browns") moved to dismiss the Complaint on December 22, 2003, for lack of jurisdiction over the subject matter. See Motion to Dismiss (Document # 2). On December 30, 2003, Plaintiff filed an objection to the Motion to Dismiss. See Plaintiff's Objection to Motion to Dismiss (Document # 3). On that same date, Plaintiff also filed the Motion to Amend (Document # 4) and the Motion to Submit Records (Document # 5). Plaintiff filed on January 5, 2004, a motion to allow her to exceed the court's page limitations to Memorandums to Amend to Dismiss to More than Five and Ten Pages ("Motion to Expand Attachments") (Document # 6). This motion was granted by Senior Judge Ronald R. Lagueux on January 6, 2004, See Document # 7 and Plaintiff filed the additional exhibits on January 27, 2004, see Document # 9. On January 26, 2004, this Magistrate Judge, noting the absence of a proposed amended complaint from the Motion to Amend issued an order, giving Plaintiff fifteen days within which to file a proposed amended complaint. See Order regarding Motion to Amend (Document # 8). The Order specifically directed Plaintiff's attention to the requirements of Fed. R. Civ P. 8 (a) and 8 (e) (1). See id Plaintiff submitted her Proposed Amended Complaint (" Brown PAC") on February 9, 2004.

B. Cinquegrana

In the Cinquegrana action, Plaintiff filed her complaint on October 3, 2003. See Complaint (Document # 1). Defendants Deborah Cinquegrana and Brian Cinquegrana (the

"Cinquegranas") responded on December 16, 2003, by moving for dismissal, see Motion to Dismiss Brought Pursuant to Federal Rules of Civil Procedure 12 (b)(1) ("Motion to Dismiss") (Document #3), and for sanctions, see Motion for Sanctions Pursuant to Federal Rules of Civil Procedure Rule 11 (Document #2). On December 29, 2003 Plaintiff filed the Motion to Submit Records (Document #5), the Motion to Amend (Document #6) and an objection to the Motion to Dismiss, see Plaintiff's Objection to Motion to Dismiss (Document # 7). Plaintiff filed a Motion to Expand Attachments to Memorandum Amend (sic) (Document #8) on January 5, 2004, which was granted by Judge Lagueux on January 8, 2004, see Document # 9 and Plaintiff filed additional exhibits on January 27, 2004, see Document # 13. As inn Brown, Plaintiff failed to submit a copy of her proposed amended complaint with the Motion to Amend, and the court issued an identically worded order directing her to do so within fifteen days. See Order Regarding Motion to Amend (Document # 12) Plaintiff submitted her Proposed Amended Complaint ("Cinquegrana PAC") on February 9, 2004. On February 18, 2004 the Cinquegranas field a response to the PAC, See Defendants Additional Argument and Response as to Plaintiff's Motion to Amend (Document # 14).

C. March 8, 2004 Hearing

A hearing was held on March 8, 2004 on the Motions to Dismiss (Brown Document #2, Cinquegrana Document # 3), the Motions to Amend (Brown Document #4, Cinquegrana Document #6), the Motions to Submit Records (Brown Document #5, Cinquegrana Document #5), and the Motion for Sanctions (Cinquegrana Document #2). At that time, Plaintiff conceded that the Complaint in neither case complied with Rule 8, and she requested that her Motions to Amend be granted. After listening to argument, the Court stated that it would take the matters under advisement and issue a written decision. See Order Staying Discovery (Brown Document # 11,

Cinquegrana Document #16).

II. Facts

For purposes of this Memorandum and Order the court assumes the facts as stated in the Proposed Amended Complaints ("PACs") are true and construes the allegations liberally in deference to Plaintiff's pro se status. The PACs contain 52 separately numbered paragraphs, some of which have multiple subparagraphs. In essence, Plaintiff a physician alleges that the Browns and the Cinquegranas ("Defendants") file false complaints against her with the Rhode Island Board of Medical Licensure and Discipline (the "Board"), see Brown PAC 3, 6; Cinquegrana PAC 3,6, that they testified falsely at a hearing before the Board, see Brown PAC 3, 6, 28; Cinquegrana PAC 3,6, 28 and that they caused Plaintiff to lose her medical practice, see Brown PAC 7, 8 Ciniquegrana PAC 7,8 and to suffer loss of reputation and income, see Brown PAC 5, 20 Cinquegrana PAC 5,20. Plaintiff specifically charges Defendants with interfering with the contractual relationship which existed between Plaintiff and her patients, see Brown PAC 3; Cinquegrana PAC 3 (Count I); 2) false light invasion of privacy," Brown PAC 11; Cinquegrana PAC 11 (CountII); 3) " interference with advantageous relations," Brown PAC 15;Cinquegrana PAC 15 (Count III); 4) "disparagement," Brown PAC 23; Cinquegrana PAC 23 (Count IV); 5) " malice and intent to harm" Brown PAC 30; Cinquegrana PAC 30 (CountV) and 6) prima facie tort," Brown PAC 48;Cinquegrana PAC 48 (Count VI). Plaintiff seeks "compensatory damages for the harm to her reputation and the loss of her business, punitive damages for pain and suffering, costs any applicable attorney's fees and such further other relief as this Court deems fitting and proper..." Brown PAC, Prayer for Relief; Cinquegrana PAC, Prayer for Relief.

III. Pro Se Status

Plaintiff is proceeding pro se, and therefore her pleadings are held to a less stringent standard than those drafted by lawyers. See Haines v Kerner 404 U.S. 519, 520, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972). They are to be read with an extra degree of solicitude." Rodi v Ventetuolo, 941 F. 2d 22, 23 (1st Cir. 1991). At the same time, a plaintiff's pro se status does not excuse her from complying with procedural rules. See Instituto de Educacion Universal Corp v U.S. Dep't of Educ. 209 R. 3d 18, 23 n.4 (1st Cir 2000).

IV. Motions to Amend

Fed. R. Civ. P. 15 (a) provides that leave to amend a complaint " shall be freely given when justice so requires." Maine State Bldg & Constr Trades Council AFL-CIO v U.S. Dep't of Labor, 359 F. 3d 14, 19 (1st Cir 2004). (quoting Rule).However, leave need not be granted if it would be futile. See Interstate Litho Corp v Brown, 255 F. 3d 19, 25 (1st Cir 2001). Here it is clear that the claims alleged in the PACs are barred for three reasons. First because of the Rooker-Feldman doctrine, this court is without subject matter jurisdiction. Second, Plaintiff's claims that Defendants violated her constitutional rights fail because Defendants are not state actors. Third, Defendants are protected by absolute immunity. The court discusses each of these reasons below.

A. Rooker- Feldman

The Rooker-Feldman doctrine derives from two Supreme Court decisions, Rooker v Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L.Ed 362 (1923) and District of Columbia Court of Appeals v Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L.Ed 2d 206 (1983). The doctrine " provides that lower federal courts do not have subject matter jurisdiction to review state court civil decisions. Plaintiffs must instead seek review through the state court system and, if necessary petition the United States Supreme Court for a writ of certiorari." Edwards

v Illinois Bd of Admissions to the Bar, 261 F. 3d 723, 728 (7th Cir 2001) (citations omitted); see also Picard v Members of Employee Ret Bd of Providence, 275 F. 3d 139, 145 (1st Cir 2001) ("describing the contours of this jurisdictional doctrine"); Sheehan v Marr 207 F. 3d 35, 39 (1st Cir 2000) (explaining the doctrine). "The Supreme Court has applied the Rooker-Feldman jurisdictional bar to two categories of claims, those (1) actually decided by a state court, see Rooker v Fid Trust Co. 263 U.S. 413, 415, 44 S. Ct 149...or 2) 'inextricably intertwined' with a state court judgment, see Dist of Columbia Ct of App v Feldman 460 U.S. 462, 48 [3] n.16 103 S. Ct. 1303..." Pittsburg County Rural Water Dist No 7 v. City of McAlester, 358 F.3d 694, 707 (10th Cir 2004). "Here, Plaintiff's constitutional claims inextricably intertwined, Feldman 460 U.S. at 483 n. 16, 103 S. Ct at 1316 n. 16, with the state superior court's upholding of the Board's decision to suspend Plaintiff's medical license, see Mills v Nolan No PC 01-4153, 2003 WL 22790706 (R.I. Super. Ct Nov 13, 2003). This 'inextricable intertwining" is apparent from a comparison of the allegations of the PACs and the findings of the superior court. Plaintiff alleges that she " was NOT allowed her due process and equal protection of the law in that she was not allowed to submit supporting evidence to show that the claims made by the Defendants were false allegations." Brown PAC 6e Cinquegrana PAC 6 j. The state superior court found that Plaintiff " had numerous opportunities to call witnesses on her behalf and submit evidence to substantiate her claims. At no time during the proceedings did (Plaintiff) attempt to do so." Mills v Nolan 2003 WL 22790706 at 17. Plaintiff asserts that she was not afforded due process and that the " record is totally devoid of supporting evidence....," Brown PAC 35; Cinquegrana PAC 35, presumably referring to evidence before the Board which would support the complaints filed against her by Defendants. The state superior court decision contains repeated findings that there was "substantial evidence" in the

record to support the Board's action. See Mills vs Nolan 2003 WL 22790706 at 11-19.

Constitutional claims which are "inextricably intertwined' with state court proceedings, impermissibly invite the federal district court, 'in essence,' to review a final state court decision. Lower federal courts are without subject matter jurisdiction to sit in direct review of state court decisions." Wang v New Hampshire Bd of Registration in Med., 55 F. 3d 698 703 (1st Cir 1995) (citation omitted). "This is true, even though the state court judgment may have been erroneous." In re Sun Valley Foods Co., 801 F.2d 186, 189 (6th Cir 1986). This lack of jurisdiction is not altered by claims that the state judgment is unconstitutional, see Schneider v Colegio de Abogados de Puerto Rico 917 F. 2d 620 628 (1st Cir 1990), or that the Plaintiff's constitutional rights were violated in the state proceeding, see Musslewhite v State Bar of Texas 32 F. 3d 942,944,947 (5th Cir 1994); Tidik v Ritsema 938 F. Supp 416, 424 (E.D. Mich 1996) (holding that district court had no jurisdiction to consider plaintiff's claims that his constitutional rights were violated in state divorce proceeding). To apply 'inextricably intertwined" standard a federal district court asks "whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." Pittsburg County Rural Water Dist. No 7 v City of McAlester 358 F. 3d 694 707(10th Cir 2004); see also Edwards v Illinois Bd of Admissions to the Bar, 261 F. 3d 723,729 (7th Cir 2001) (same). If the injury is due to the state court judgment then the federal court lacks subject matter jurisdiction. See id If not then the Rooker Feldman doctrine does not bar the exercise of jurisdiction. See id. Here the injury which Plaintiff alleges is that she "lost her business and her ability to practice Medicine as a result of the intentional acts and conduct of Defendants." Brown PAC 51 Cinquegrana PAC 51. Although Plaintiff attributes this alleged injury to Defendants, it is clear that it resulted from the Board's action in suspending her

medical license and the superior court's upholding of that action. Cf Manley v City of Chicago236 F. 3d 392, 397 (th Cir 2001) (upholding dismissal of terminated police officer's lawsuit because if a federal court were to grant him the relief he requested, it would need to review the state courts' rulings because his injury stemmed directly from the state court judgment upholding the administrative board's decision). It is true that Defendants' complaints prompted the Board's investigation and that their testimony provided the basis for many of the Board's findings. However, those circumstances do not make the injury distinct from the state court judgment. Thus this court lacks subject matter jurisdiction over the claims pled in the PACs.

B. Defendants Are Not State Actors

Despite the court having specifically directed Plaintiff's attention to the requirement that each PAC contain a " short and plain statement of the grounds upon which the court's jurisdiction depends, " Order Regarding Motion to Amend at 1 n.1 (Brown Document # 8 Cinquegrana Document # 12) she has alleged only that the Fourteenth Amendment provides grounds " upon which thi[s] court's jurisdiction depends," Brown PAC 32; Cinquegrana PAC 32, and cites no statute which allows this court to entertain these actions. However, the court will assume from her reference to the Fourteenth Amendment that Plaintiff is relying upon 28 U.S.C. 1331 as providing authorization for this court to exercise jurisdiction. See 28 U.S.C. 1331 (" The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.") "The Fourteenth Amendment, while guaranteeing certain rights, provides no vehicle for redress of violations of these rights. An enabling statute, 42 U.S.C. 1983, provides means for bringing suit for alleged constitutional violations. A 1983 claim may, however, only be brought against one acting under color of state law." Okropirirdze v St Jude Childrens' Research Hosp. Civ A. No

95-254, 1995 WL 339021, at 2 (E.D. Pa. June 1, 1995); see also Al3exis v McDonald's Rests. Of Massachusetts, Inc., 67 F. 3d 341, 351 (1st Cir 1995) ("A section 1983 claim does not lie absent state action.").

There are two components to the "state action requirement. First, the deprivation must be shown to have been caused by the exercise of some right or privilege created by the state, or by a rule of conduct imposed by the state, or by a person for whom the state is responsible. Casa Marie[, Inc. V. Superior Court of P.P.], 988 F.2d[252,] 258 [1st Cir 1993]. Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. Id. Where a private individual is a defendant in a section 1983 action, there must be a showing that the private party and the state actor jointly deprived the private party of her civil rights. Wagenmann v. Adams 829 F.2d 196, 209 (1st Cir 1987); Casa Marie 988 F.2d at 258-59; see also Dennis v Sparks 449 U.S. 24, 27-28, 101 S. St. 183, 186-87, 66 L.Ed 2d 185 (1980) ("Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of 1983 actions.").

Alexis, 67 F.3d at 351. Thus a 1983 action may not be brought against private actors. See Brown v Newberger, 291 F. 2d 89,93 (1st Cir 2002). The test for determining whether one can be considered a state actor is: (1) whether there was an elaborate financial or regulatory nexus between [defendants] and the government...which compelled [defendants] to act as they did., (2) an assumption by [defendants] of a traditionally public function, or (3) a symbiotic relationship involving the sharing of profits. Brown v. Newberger 291 F.3d at 93 (quoting Ponce v. Basketball Fed'n of the Commonwealth of Puerto Rico 760 F.2d 375, 377 (1st Cir 1985)) (second alteration in original). Applying this test it is apparent that the Browns and the Cinquegranas are not state actors. There is no elaborate financial or regulatory nexus between them and the State of

Rhode Island. They did not assume a traditionally public function, and there is no symbiotic relationship between them and the State involving the sharing of profits. The mere fact that Mr. Brown is employed by the Rhode Island Department of Children, Youth, and Families ("DCYF"), see Mills v Nolan 2003 WL 22790706 at 5 does not create such a nexus, cf. Brown v Newberger 291 F. 3d at 93 (holding that social worker who filed a complaint of suspected child abuse pursuant to state law did not create the kind of regulatory nexus which would justify treating her as a state actor.) Thus Defendants did not act under color of state law when they filed their complaints with the Board. See Auster Oil & Gas, Inc v Stream 764 F.2d 381, 388 (5th Cir 1985) ("A private party does not act under color of state law when she merely elicits but does not join in an exercise of official state authority."); Tarkowki v Robert Bartlett Realty Co. 644 F.2d 1204,1208 (7th Cir 1980) ("A private person does not conspire with a state official merely by invoking an exercise of the state official's authority."); Couloute v Mercury Mortgage Inc., No Civ 3:01CV1823 (PCD), 2001 WL 34315008, at 2 (D. Conn Dec. 13, 2001) (holding that defendants who filed a complaint in state court and received a favorable judgment were not "clothed with the authority of state law"); Serbalik v Gray 27 F. Supp 2d 127, 132 (N.D.N.Y. 1998) (holding that neighbors who filed complaint with Town regarding plaintiff's alleged failed septic system and who loaned bucket and hose to Town inspector, watched him perform test, observed the results, and reported their observations to him w4re not engaged in " state action"); cf. Andresen v Diorio, 349 F.3d 8, 13 (1st Cir 2003)("[I]t is settled that the fact that private parties give the police information on which official action is then taken does not by itself convert the private parties into state actors."); Daniel v Ferguson, 839 F.2d 1124,1130 (5th Cir 1988) (holding that even if private defendant did provide police with false information, the state action requirement for 1983 liability was not satisfied

since "[p]olice reliance in making an arrest on information given by a private party does not make the private party a state actor);id. (" The execution by a private party of a sworn complaint which forms the basis for an arrests, is without more not sufficient to make that party's acts state action."). (internal quotation marks omitted); Grow v Fisher 523 F.2d 875, 879 (7th Cir 1975) (finding that private persons who were complainants and witnesses in criminal prosecution were not acting under color of state law). Similarly, Defendants did not act under the color of state law when they testified before the Board. See Briscoe v LaHue 460 U.S. 325, 329-30, 103 S. Ct. 1108, 1112-13, 75 L.Ed 2d 96 (1983) (" [W]hen a private party gives testimony in open court in a criminal trial that act is not performed under color of law.") (internal quotation marks omitted); Slotnick v Garfinkle 632 F.2d 163, 166 (1st Cir 1980) ("[P]articipation by a private party in litigation without more does not constitute state action, a necessary precondition to a section 1983 claim.") (citations omitted). Plaintiff's allegations that Defendants acted with malice and the intent to harm her, see Brown PAC 13, 19, 30, 50, 52 Cinquegrana PAC 13, 30, 50, 52 do not alter the above determinations, see Johnson v Miller 680 F.2d 39, 40 (7th Cir 1982) (holding that the filing of a criminal complaint with the police is the act of a private citizen and that while a groundless complaint may violate state tort law, it does not alter the private character of the complainant); Couloute v Mercury Mortgage Inc., No Civ 3:01CV1823 (PCD), 2001 WL 34315008, at 2 (D. Conn. Dec 13, 2001) ("Section 1983)...preserves constitutional rights from infringement by persons who act under federal or state authority, not private citizens who commit wrongful acts, however wilful and malicious they may be."). Because Defendants were not acting under color of state law, an action against them pursuant to 1983 is barred.

C. Immunity

Witnesses are absolutely immune for testimony in judicial

proceedings even if the statements made are false and made with malice. See Briscoe v LaHue 460 U.S. 325, 330-32, 103 S. Ct 1108, 1113-14, 75 L. Ed 2d 96 (1983); Reid v State of New Hampshire 56 F. 3d 332, 337 n.11 (1st Cir 1995) (noting that " all witnesses, including those who five perjured testimony are absolutely immune from civil suit under 1983). This immunity extends " to any hearing before a tribunal which perform[s] a judicial function." Burns v Reed 500 U.S. 478,490 111 S. Ct 1934, 1941, 114 L. Ed. 2d 547 (1991) (internal quotation marks omitted). Thus, witnesses involved in quasi-judicial proceedings enjoy the same absolute immunity as witnesses in judicial proceedings. See Richter v Conner No. 93-1433, 1994 WL 118011, at 7 (4th Cir Apr 8, 1994) (unpublished table decision) (holding that witnesses who testified against physician at hearing before Board of Medicine " are absolutely immune from civil suit for the purported false testimony"); Rohrbach v Charbonneau No Civ. 99-282- P.C., 2000 WL 76030 at 7 (D. Me. Mar 1, 2000) (finding that hearing before Board of Zoning Appeals is a quasi-judicial proceeding and that witnesses enjoyed absolute immunity); Laden v City of Philadelphia, Civ A. No 92-0697, 1992 WL 129784, at 1 (E.D. Pa. June 8, 1992) (stating that witness who testified before licensing board was entitled to absolute immunity for his testimony); Zanders v Pinion, Civ. A. No. 90- 0385, 1991 WL 175557, at 3 (E.D. La., Aug. 23, 1991) (" A witness before a parole board enjoys absolute immunity from liability for his or her testimony before the board.") (citing Johnsoon v Kegans 870 F. 2d 992, 997 (5th Cir 1989). The United States Court of Appeals for the First Circuit has held that the doctrine of quasi-judicial immunity bars the recovery of monetary damages from staff members of a state medical board for their actions in a proceeding which resulted inn the revocation of a physician's license to practice medicine. See Bettencourt v Bd. Of Registration in Med. Of the Commonwealth of Massachusetts, 904 F.2d 772, 784-85 (1st Cir 1990). Because of the high public

interest in having an effective disciplinary and regulatory system for physicians, and the need to have persons testify freely without fear of retribution, this court holds that witnesses who testify before the Board are entitled to absolute immunity. Cf Watterson v. Page. 987 F. 2d 1, 9 (1st Cir 1993) (" [A]11 witnesses at judicial proceedings have an absolute immunity from damages liability based on their testimony."). Accordingly Plaintiff's PACs are also futile because Defendants are protected by absolute immunity for their actions in filing complaints and testifying against Plaintiff.

D. Summary Re Motions to Amend

In summary, there is no basis for this court to exercise jurisdiction over Plaintiff's PACs. The claims asserted therein are "inextricably intertwined" with the state superior court decision upholding the Board's action and the Rooker-Feldman doctrine prohibits this court from entertaining them. The constitutional claims she asserts in the PACs fail because Defendants were not acting under color of state law. In addition, Defendants are protected by absolute immunity from Plaintiff's claims. Accordingly, the Motions to Amend are hereby DENIED.

E. Motions to Submit Records

The court has reviewed the material contained in the Motions to Submit Records. There is nothing contained in those material which affects the court's findings that Plaintiff's claims are barred by the Rooker-Feldman doctrine, that Defendants are not state actors, and that Defendants have absolute immunity for the acts about which Plaintiff complains. Therefore, the Motions to Submit Records are denied.

So Ordered.

Enter:
/s/ David L. Martin
United States Magistrate Judge
April 21, 2004

By Order:
/s/ Mark Sauciu
Deputy Clerk